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## SENATE BILL NO. 627

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 2.2-4354 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 11-4.6, relating to prompt payment; contractors and subcontractors.

Patron—Vogel

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-4354 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 11-4.6 as follows:**

**§ 2.2-4354. Payment clauses to be included in contracts.**

A. Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to ~~take one of the two following actions~~ pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

B. Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

D. A subcontractor shall be entitled to payment when such subcontractor has performed in accordance with the provisions of the contract. Payment by the state agency or agency of local government to the contractor shall not be a condition precedent for payment to a subcontractor, and payment by a contractor to a subcontractor shall not be a condition precedent for payment to any other subcontractor. Any agreement to the contrary shall be unenforceable.

**§ 11-4.6. Construction contract; interest provision; payments to subcontractors.**

A. As used in this section, unless the context requires a different meaning:

"Construction contract" means a contract between a general contractor and a subcontractor relating to the construction, alteration, repair, or maintenance of a nonresidential building, structure, or appurtenance thereto, including moving, demolition, and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings.

"Construction contract" shall not include any contract with any locality or legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, or board.

"General contractor" means the same as that term is defined in § 43-1.

"Owner" means the person who enters into a construction contract with a general contractor.

"Subcontractor" means the same as that term is defined in § 43-1.

B. Any construction contract entered into on or after July 1, 2020, shall be deemed to include an

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59 *interest clause that obligates the general contractor to pay interest to the subcontractor on all amounts*  
60 *owed by the contractor that remain unpaid after seven days following receipt by the general contractor*  
61 *of payment from the owner for work performed by the subcontractor under that contract.*  
62 *C. A subcontractor shall be entitled to payment when such subcontractor has performed in*  
63 *accordance with the provisions of the contract. Payment by the owner to the contractor shall not be a*  
64 *condition precedent for payment to a subcontractor, and payment by a contractor to a subcontractor is*  
65 *not a condition precedent for payment to any other subcontractor. Any agreement to the contrary shall*  
66 *be unenforceable.*